

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RONALD D. KESTNER, SR.,

Plaintiff,

v.

CAPITAL ONE BANK (USA), N.A.,

Defendant.

Civil Action No. 2:21-85

[Removed from the Court of Common Pleas of
Allegheny County, Pennsylvania
Case No. GD 20-007829]

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendant Capital One Bank (USA), N.A. (“Capital One”) removes this action from the Court of Common Pleas of Allegheny County, Pennsylvania, to the United States District Court for the Western District of Pennsylvania. Removal is appropriate based on federal question jurisdiction because Plaintiff, Ronald D. Kestner, Sr., asserts a claim under the Fair Credit Reporting Act (the “FCRA”). In support of this Notice, Capital One states the following:

I. Background

1. Plaintiff originally filed this case in the Court of Common Pleas of Allegheny County, Pennsylvania, on or about July 22, 2020.

2. Plaintiff filed the Complaint on or about October 19, 2020. In accordance with 28 U.S.C. § 1446(a), a true and correct copy of the Complaint is attached as **Exhibit A**. A true and correct copy of the Praecipe for Writ of Summons is attached as **Exhibit B**. A true and correct copy of the Proof of Service is attached as **Exhibit C**. A true and correct copy of the Allegheny County Court of Common Pleas docket is attached as **Exhibit D**.

3. The removal of this action to this Court is timely under 28 U.S.C. § 1446(b) because Capital One seeks removal within thirty (30) days of receipt of Plaintiff's initial pleading. Capital One was served with the initial pleading on December 21, 2020.

4. The United States District Court for the Western District of Pennsylvania is the proper place to file this Notice of Removal under 28 U.S.C. § 1441(a) because it is the federal district court that embraces the place where the original action was filed.

5. In accordance with 28 U.S.C. § 1446(d), Capital One will file a copy of this Notice of Removal with the clerk of the Court of Common Pleas of Allegheny County, Pennsylvania. A copy of the Notice of Filing of Notice of Removal, without exhibits, is attached hereto as **Exhibit E**.

6. In accordance with 28 U.S.C. § 1446(d), Capital One will give written notice of the filing of this Notice of Removal to Plaintiff.

7. In filing this Notice of Removal, Capital One does not waive any, and specifically reserve all, defenses, exceptions, rights, and motions. No statement or omission in this Notice shall be deemed an admission of any allegations of or damages sought in the Complaint.

8. As set forth below, this case is properly removed to this Court because this Court has original jurisdiction over this action under 28 U.S.C. § 1331.

II. This Court Has Federal Question Jurisdiction

9. This Court has federal question jurisdiction because Plaintiff asserts claims that arise under federal law. *See* 28 U.S.C. § 1331 ("The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.").

10. Plaintiff's Count I alleges a violation of the FCRA.

III. Conclusion

Accordingly, Capital One files this Notice of Removal and removes this civil action to the United States District Court for the Western District of Pennsylvania. Capital One requests that the Court assume exclusive jurisdiction of this action and enter such orders as may be necessary to accomplish the requested removal and promote the ends of justice.

Respectfully submitted,

Dated: January 20, 2021

By: /s/ Gregory E. Dapper

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